APPENDIX A

Title 38

SUBCHAPTER II

(Enacted. Laws 1979, c. 511 § 2.)

(Amended. Laws 1979, c. 640 § 3.)

(Repealed. Laws 1983, c. 566 § 43.)

§ 1311. Findings; intent

The Legislature finds that proper disposal of solid wastes, and protection of land, air and water resources is important to the public health, safety and welfare; that the Legislature has mandated that municipalities provide for the proper disposal of solid wastes; that waste disposal facilities must comply with strict state and federal requirements; and that the operating costs of these facilities are high, putting an increasing burden on local property taxes.

It is the intent of this chapter that the State will participate with

municipalities in up to 50% of the cost of maintaining and operating solid waste disposal facilities that are in substantial compliance with the requirements of this chapter.

The Legislature further intends that the State will participate with counties in up to 50% of the cost of maintaining and operating solid waste disposal facilities that are in substantial compliance with this chapter and that are assisting municipalities with the proper disposal resource recovery or transfer of solid waste.

§ 1312. Solid waste subsidy

1. Establishment. There is established a fund to provide an annual solid waste subsidy to be paid to qualifying municipalities and counties.

2. Calculation. This subsidy shall provide a percentage, up to 50% of the

actual eligible cost of solid waste facility operation and maintenance for the prior year. This percentage of state participation shall be calculated by dividing the legislative appropriation for this fund by the sum of the reported eligible costs from all municipalities and counties. Each municipality and county shall receive a subsidy equal to this percentage multiplied by their actual eligible costs for the prior year.

§ 1313. Eligible facilities

1. Facilities. All municipalities and counties operating or contracting with the following types of solid waste disposal facilities will be eligible for the solid waste subsidy:

A. Municipal facilities;

B. Private facilities;

C. County facilities; and

D. Facilities operated by regional refuse districts and other public or quasi-public entities.

2. Compliance. Those facilities that the Board has determined are in substantial compliance with the following criteria will be eligible for the solid waste subsidy:

A. Operational criteria in rules adopted under section 1304, subsection 1, for facilities established on or before October 3, 1973; and

B. Site and operational criteria in section 421 and rules adopted under section 1304 for facilities established after October 3, 1973.

3. Appeals. Municipalities and counties may appeal determination of compliance in accordance with provisions of chapter 2.

§ 1314. Eligible costs

The following costs of operating and maintaining solid waste disposal facilities will be eligible for subsidy:

1. Salaries and wages. Salaries and wages of persons for time actually employed at the facilities;

2. Utilities. Cost of all utilities used at facilities;

3. Road maintenance. Road maintenance for roads used exclusively for the facility;

4. Miscellaneous supplies and services. Miscellaneous supplies and services, including pest control, used at the facility;

5. Cover material. Cover material:

A. Cost of purchased cover material; or

B. Value of cover material based on rates to be determined by the department;

6. Equipment costs. Equipment costs:

A. Cost of rental of equipment used at the facility; or

B. Operation, maintenance and capital cost of equipment owned by the municipality or county and used at the facility. Capital costs shall be amortized over the expected life of the equipment. Only annual costs in proportion to the fraction of time the equipment is used at the facility shall be eligible for reimbursement;

7. Transfer stations. All annual costs, including equipment and transportation, resulting from operation of waste transfer stations;

8. Resource recovery. All annual costs resulting from recycling, resource recovery and energy production from solid wastes; and

9. Exclusions. Costs for transport, storage, treatment and disposal of

municipal or industrial sludge are not eligible for subsidy.

§ 1315. Administration

1. Municipal reporting of costs. The solid waste subsidy shall be based on costs for the prior calendar year. All municipalities and counties shall report actual eligible costs to the department by February 1st.

2. Determination of subsidy. The Legislature shall by May 1st annually enact legislation appropriating a fund for this subsidy. A subsidy index shall be calculated by dividing this fund by the sum of the eligible annual costs reported by municipalities and counties for the prior calendar year. If the subsidy index is greater than 0.50, it shall be established at 0.50. All money not expended from the fund shall lapse. Each municipality and county shall receive an

amount equal to this subsidy index times the municipality's or county's reported costs.

3. Authorization of payment. The commissioner shall authorize subsidy payments to the eligible municipalities and counties. The subsidy shall be paid to each municipality and county in 2 equal installments, the first on June 1st and the 2nd on October 1st each year for the prior year's costs.

4. Audits. Each municipality and county shall maintain records and accounts sufficient to document reported costs, and these records and accounts shall be available for audit for at least 3 years.

5. Appeal. The computation of the solid waste subsidy for any municipality or county may be appealed in writing to the board by the municipal officers or county commissioners within 30 days from the date

of notification of the computed amount. The board shall review the appeal and make an adjustment if, in its judgment, an error has been made. The board's decision shall be final as to facts supported by the records of the appeal.

APPENDIX B

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document No. 1641

STATE OF MAINE

IN THE YEAR OF OUR LORD

NINETEEN HUNDRED AND EIGHTY-ONE

AN ACT to Authorize a General Fund Bond Issue in the Amount of $2,500,000 to Assist Municipalities with Resource Recovery of Solid Waste.

Preamble. Whereas, the Legislature deems it necessary to alleviate the threat to ground and surface waters to prevent environmental damage, to conserve valuable land and other resources and to reduce the hazard to the health, safety or welfare of

the State caused by prevailing solid waste management practices.

Whereas 2/3 of both Houses of the Legislature deeming it necessary in accordance with the Constitution of Maine, Article IX, Section 14, to authorize the issuance of bonds on behalf of the State to provide funds for the evaluation and implementation of municipal solid waste resource recovery systems or components thereof, and any system, program or facility for resource conservation.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. 38 M.R.S.A. § 1303, sub-§§ 3-A and 10-A are enacted to read:

3-A. Final implementation of resource conservation or resource recovery. "Final implementation of resource conservation or resource recovery" means negotiating and obtaining the contracts, agreements,

financing, permits and administrative framework necessary to construct or procure a resource conservation or resource recovery facility. The Board of Environmental Protection is authorized to pay an amount not in excess of 50% of the total eligible expenses incurred by a municipality or quasi-municipal entity for the final implementation of solid waste resource conservation or resource recovery or programs determined to be feasible by the Board of Environmental Protection. Grants under this subsection can be used to cover development costs or other reasonable one-time eligible costs. In addition, grants under this subsection can be used to assist municipal and quasi-municipal recycling programs with capital and one-time equipment costs.

A. The board after public hearing shall adopt criteria for the purpose of establishing eligible costs.

B. The board may adopt, amend and repeal reasonable rules necessary for the proper administration of the grant program authorized by this subsection and subsection 10-A.

C. In the event that there is a combination of federal and state grants that exceeds the total costs of the projects eligible for State assistance under this subsection or subsection 10-A, the Board of Environmental Protection may reduce the state's share by an amount equivalent to the amount in excess of the total costs of the project.

10-A. Solid waste resource recovery or resource conservation feasibility and design evaluation. "Solid waste resource

recovery or resource conservation feasibility and design evaluation" means the detailed technical, economic, organizational, transportation, market and design analysis necessary for the implementation of successful solid waste resource conservation or resource recovery.

The Board of Environmental Protection is authorized to pay an amount not in excess of 50% of the total eligible expenses incurred by a municipality or quasi-municipal entity for feasibility and design evaluation.

Sec. 2. Authorization of bond issue to assist municipalities with solid waste management resource recovery or resource conservation systems.

1. Issue of bonds to provide for the evaluation and implementation of municipal or quasi-municipal solid waste resource

recovery or resource conservation. The Treasurer of State is authorized, under the direction of the Governor, to issue from time to time bonds in the name and behalf of the State to an amount not exceeding $2,500,000 for the purpose of raising funds to provide for the evaluation and implementation of solid waste for resource recovery systems or components thereof and any system, program or facility for resource conservation. These bonds shall be general obligations to the State and the full faith and credit of the State shall be pledged to the payment of interest and redemption of the bonds.

The bonds shall be dated, shall mature at such time or times not exceeding 20 years from their date and may be made redeemable before maturity, at the option of the Treasurer of State, at such price

or prices and under such terms and conditions as may be approved by the Governor prior to the issuance of bonds.

The Treasurer of State, with the approval of the Governor, shall determine the form of the bonds, including any interest coupons to be attached thereto and shall fix the denomination or denominations of the bonds and the place or places of payment or principal and interest, which may include any bank or trust company within or without the State.

The bonds shall be signed by the Treasurer of State and any interest coupons attached thereto shall be executed with facsimile signature of the Treasurer of State. In case any officer whose signature appears on any bonds or coupons ceases to be the officer before the delivery of the bonds, the signature or facsimile shall nevertheless be valid and

sufficient for all purposes, the same as if he had remained in office until the delivery. The bonds may be issued in coupon or registered form, or both, and may be interchangeable as the Treasurer of State may determine.

2. Records of bonds issued to be kept by State Auditor and Treasurer of State. The State Auditor shall keep an account of the bonds, showing the number and amount of each, the date of countersigning, the date when payable and the date of delivery thereof to the Treasurer of State, who shall keep an account of each bond showing the number thereof, the name of the person to whom sold, the amount received for the same, the date of sale and the date when payable.

3. Sale, how negotiated, proceeds appropriated. The Treasurer of State may negotiate the sale of the bonds by

direction of the Board of Environmental Protection with the approval of the Governor. The proceeds of the sales of the bonds, which shall be held by the Treasurer of State and paid by him upon warrants drawn by the State Controller at the order of the Board of Environmental Protection or its authorized representative, are hereby appropriated to be used solely for the purposes set forth in this Act. Any balance unexpended shall not lapse, but shall be carried forward to the same account to be used only for the purpose set forth in this Act.

4. Proceeds of bonds not available for other purposes; must be separate from other funds. The proceeds of all bonds issued under the authority of this Act, and the funds made available for interest and debt retirement thereunder shall at all times be kept distinct from all other

moneys of the State and shall not be drawn upon or be available for any other purpose.

5. Interest and debt retirement. Interest due or accruing upon any bonds issued under this Act and all sums coming due for payment of bonds at maturity shall be paid by the Treasurer of State.

6. Disbursement of bond proceeds. The proceeds of these bonds shall be expended under the direction and supervision of the Board of Environmental Protection.

7. Contingent upon ratification of bond issue. Subsections 1 to 6 and section 1 shall not become effective unless and until the electors of the State have ratified the issuance of bonds as set forth in this Act.

8. Statutory referendum procedure; submission at statewide election; effective date. This Act shall be

submitted to the legal voters of the State of Maine at a statewide election to be held on the Tuesday following the first Monday of November following passage of this Act. The city aldermen, town selectmen and plantation assessors of this State shall notify the inhabitants of their respective cities, towns and plantations to meet, in the manner prescribed by law for holding a statewide election, to vote on the acceptance or rejection of this Act by voting on the following question:

"Shall a bond issue be ratified in the amount of $2,500,000 to assist municipalities with solid waste for resource conservation and recovery systems?"

The legal voters of each city, town and plantation shall vote by ballot on this question, and shall designate their choice

by a cross or check mark placed within a corresponding square below the word "Yes" or "No." The ballots shall be received, sorted, counted and declared in open ward, town and plantation meetings and returns made to the Secretary of State in the same manner as votes for members of the Legislature. The Governor shall review the returns and, if it appears that a majority of the legal votes are in favor of the Act, the Governor shall proclaim that fact without delay, and the Act shall become effective 30 days after the date of the proclamation.

The Secretary of State shall prepare and furnish to each city, town and plantation all ballots, returns and copies of this Act necessary to carry out the purposes of this referendum.

FISCAL NOTE

There are funds in the Legislative Document 267, the Part II Budget proposal for solid waste activities, sufficient to employ the 2 people needed to administer this bond issue program. It is the intent of the Energy and Natural Resources Committee that the Appropriation Committee make the necessary adjustments in the appropriation for solid waste activities in the Part II Budget to administer the bond issue program. This adjustment will be to reduce the amount budgeted for consulting services by $100,000 for the biennium to allow redistribution of this amount for personal services, all other and capital. This adjustment within the Part II Budget request will not increase the original total amount requested.

STATEMENT OF FACT

The bond issue is intended to assist communities with the costs of evaluating, designing and implementing solid waste for resource conservation and recovery systems.

Solid waste systems that protect the public health, safety or welfare and prevent or abate air and water pollution benefit the people of Maine as a whole, as well as the people of the immediate local area. Resource recovery and conservation could provide solid waste management solutions for 60% of Maine's municipal waste and reduce petroleum needs by 600,000 barrels each year. Many resource recovery projects fail to reach construction even though they are proven to be financially and environmentally advantageous. It is often impossible for communities to receive the expert

management, financial and technical guidance essential for the implementation of the facility. The statewide sharing of the benefits of recovery and conservation programs makes it desirable that these programs be helped in obtaining the necessary professional assistance. The bond issue and its accompanying program authorization proposes that some of the development costs be shared on a statewide basis.

This new draft proposes to assist communities with the implementation of solid waste energy and material recovery facilities through a bond issue mechanism. This bond issue would provide $1,575,000 to help implement resource recovery programs and $925,000 to assist material conservation and recycling programs. This will allow communities to develop efficient energy and resource saving solid

waste systems which protect the natural environment of the State and its groundwater resources.

APPENDIX C

ONE HUNDRED AND ELEVENTH LEGISLATURE

Legislative Document No. 1392

STATE OF MAINE

IN THE YEAR OF OUR LORD

NINETEEN HUNDRED AND EIGHTY-THREE

AN ACT to Authorize Municipalities to Guarantee Delivery of Their Solid Wastes to Specific Waste Facilities

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Be it enacted by the People of the State of Maine as follows:

Sec. 1. 38 M.R.S.A. § 1304-B is enacted to read:

§ 1304-B. Delivery of solid wastes to specific waste facilities

1. Findings and purpose. The Legislature makes the following findings

of fact. The State requires each municipality to provide a disposal facility for domestic and commercial solid waste generated within the municipality. Solid waste contains valuable recoverable resources, including energy. Many municipalities have found that energy recovery reduces the cost of solid waste disposal. Energy recovery technology is complex and the equipment requires a steady supply of waste to operate efficiently. Because of the complicated technology, most energy recovery facilities have high capital costs and long payback periods. In order to remain cost effective throughout their lives, these energy recovery facilities require a guaranteed, steady supply of waste. Consequently, municipalities utilizing energy recovery facilities are usually required to enter long-term agreements to

provide the facilities with specific amounts of waste. In order to make these energy recovery facilities financially feasible, and thereby simultaneously improve the environmental impacts and the economics of municipal solid waste disposal, municipalities shall have the legal authority to control the handling of solid waste generated within their borders.

The purpose of this section is to promote the recovery of resources from solid waste by creating one of the conditions which make energy recovery economically feasible, assuring municipalities the authority to guarantee a steady supply of solid waste to specific waste facilities.

2. Flow control. Municipalities are expressly authorized to enact ordinances that control solid waste collection, its transportation or its delivery to a

specific facility, when the purpose and effect of such an ordinance is to gain management control over solid waste and enable the reclamation of resources, including energy, from these wastes. This authorization includes, but is not limited to, ordinances:

A. Requiring segregation of wastes; and

B. Requiring delivery of wastes generated within the municipality, or any portion of those wastes, to a designated disposal or reclamation facility.

3. Ordinances. This chapter shall not be construed as limiting the authority of any municipality to enact ordinances for the regulation of solid waste disposal, provided that these ordinances are not less stringent than or inconsistent with this chapter or the regulations adopted under this chapter.

4. Contracts. Municipalities may contract with any person for the collection, transportation, storage, processing, salvaging or disposal of wastes.

Sec. 2. 38 M.R.S.A. § 1305, subsection 2, as amended by P.L. 1979, c. 541, Pt. A, §277, is repealed.

Sec. 3. 38 M.R.S.A. § 1305, subsection 3, as enacted by P.L. 1973, c. 387, is repealed.

STATEMENT OF FACT

Energy recovery is the extraction and use of energy from solid waste. There are a number of ways to extract this energy, but the most common method is incinerating solid waste to produce hot water or steam. The hot water or steam is then sold to offset the cost of incineration.

Energy recovery technology is complex and the equipment requires a steady supply

of waste to operate efficiently. Because of the complicated technology, energy recovery facilities have high capital costs and long payback periods. In order to remain cost-effective throughout their lives, energy recovery facilities usually enter long-term agreements with waste suppliers in order to guarantee that they have a steady supply of waste. In most cases, these waste suppliers are municipalities.

Twenty-four municipalities have long-term contracts with Auburn's energy recovery facility which began operation in 1981. Several other groups of municipalities are actively working to develop similar facilities.

During the next 5 years, 120 to 150 municipalities will have to close solid waste disposal sites that have reached capacity or are causing environmental

damage. Over 50 of these municipalities may turn to energy recovery as their most cost-effective alternative. Landfill space is getting scarce and energy is expensive. Energy recovery can reduce the need for landfill space and provide a relatively inexpensive source of energy, if there is a large enough waste supply to support the facility and a reliable buyer for the energy produced.

In order to guarantee a steady waste supply, most energy recovery facilities require participating municipalities to enter long-term agreements to deliver a minimum amount of waste to the facility or pay a penalty if insufficient waste is delivered. This type of agreement is known as a "put or pay" contract. The municipality must deliver the waste, or pay for it anyway. In order to meet their contractual obligations, most of these

municipalities pass ordinances requiring waste generated within the municipality to be delivered to the facility with whom the municipality has the contract. These ordinances are often referred to as "flow control ordinances," because they control the flow of solid waste from its point of generation to its point of disposal.

Municipalities need the express authority to enforce this type of ordinance. Recent federal court decisions, such as City of Lafayette v. Louisiana Power and Light Company, 435 United States 389 (1978); California Retail Liquor Dealers Association v. Midcal Aluminum, Incorporated, 445 United States 97, 1980; Community Communications Company, Incorporated v. City of Boulder, 50 United States L.W. 4144, United States, January 13, 1982; and Hybud Equipment Corporation et al. v. City of Akron et

al., 654 F. 2d 1187, 1981, vacated, 50 United States L.W. 3667, United States, February 22, 1982, indicate that a state legislature must "clearly articulate and affirmatively express" a policy to promote energy recovery and authorize municipalities to control their solid waste flow before these ordinances can withstand judicial scrutiny. This bill establishes that policy and affirms that authority.

Section 1 enacts a new Title 38, section 1304-B, expressing the Legislature's intent to promote energy recovery and authorizing municipalities to guarantee delivery of their solid wastes to specific waste facilities.